The judgment-debtor in his affidavit raises objection to the proceedings on yet another ground. It is contended that the bankruptcy proceedings are bad due to lack of authority for Mr. N. Takai to institute the proceedings on behalf of the Oriental Tin Smelters Sdn. Bhd. The petition for bankruptcy was signed by Mr. N. Takai, a director of the judgment-creditors, and dated 27th October, 1972. When the validity of the proceedings was challenged an affidavit affirmed by Mr. N. Takai was filed in which he stated that he had been duly authorised by the judgment-creditors to act on their behalf in all matters in connection with the bankruptcy proceedings against the judgment-debtor. A written authority was attached to the affidavit bearing the seal of the company but it was not dated. When Mr. N. Takai was cross-examined, he disclosed that the authority was given to him on 1st March, 1973. It is clear that when he signed the petition on 27th October, 1972 he had no such authority. I also find another irregularity in this case. The affidavit certifying the truth of the statements in the petition bears the date 23rd October 1972, *i.e.* earlier than the date of the statements.

Therefore I hold that the bankruptcy proceedings were a nullity. The petition is dismissed with costs.

Petition dismissed.

Solicitors: *Arulanandom & Co.; J. R. Devadas.*

TAY SAY GEOK & ANOR. v. TAY EK SENG CO. SDN. BHD.

[F.C. (Suffian L.P., Ali F.J. and Mohamed Azmi J.) May 13, 1974]

[Johore Bahru — Federal Court Civil Appeal No. 78 of 1973]

Companies — Meeting — Power of court to order meeting to be called — Whether applicable to a meeting of Directors — Companies Act, 1965, s. 150.

The point that arose in this appeal was whether section 150 of the Companies Act, 1965, which gives the court power in certain circumstances to order a meeting to be called and conducted in such manner as the court thinks fit, is applicable to a meeting of the Board of Directors.

Held: section 150 of the Companies Act, 1965, is concerned only with a meeting of the company and is not applicable to a meeting of the Board of Directors.

FEDERAL COURT.

Lim Kean Chye (*Anthony Taye* with him) for the appellants.

Thara Singh Sidhu for the respondents.

Ali F.J.: The short point in this appeal turns on the construction of section 150 of the Companies Act, 1965 which provides as follows —

"150. If for any reason it is impracticable to call a meeting in any manner in which meetings may be called or to conduct the meeting in the manner prescribed by the articles or this Act the court may, either of its own motion or on the application of any director or of any member who would be entitled to vote at the meeting or of the personal representative of any such member, order a meeting to be called held and conducted in such manner as the court thinks fit, and may give such ancillary or consequential directions as it thinks expedient, including a direction that one member present in person or by proxy shall be deemed to constitute a meeting or that the personal representative of any deceased member may exercise all or any of the powers that the deceased member could have exercised if he were present at the meeting."

The question in dispute is whether "meeting" in this section includes a meeting of the Board of Directors. Pawan Ahmad J. who heard this case answered it in the negative and I respectfully agree with him.

The appellants as Directors applied by Originating Summons for an order under this section to convene a meeting of the Board of Directors. The reason for the application was that a meeting of the Board could not be held as there were only 3 Directors and one of them, Tay Seck Huan, having been absent or refused to attend meetings, there was no quorum of 3 as required by Article 109 of the Company's Articles of Association. As we are only concerned with the meaning and effect of section 150 of the Companies Act, 1965 I do not find it necessary to consider the reason given. Section 150 appearing as it does in Division 3 of Part V of the Act undoubtedly is concerned only with a meeting of the Company. Quite apart from that the section clearly permits a member, who in terms of section 16(6) of the Act must be a member of the Company, to apply for an order to call a meeting which can only be a meeting of the Company. A meeting of the Board of Directors is provided for in paragraph 79 of Table A of the 4th Schedule to the Act which is somewhat similar to Article 109 of the Company's Articles of Association.

As for the reason of the application, I need only observe that a quorum of 3 as required by Article 109 would be impossible to obtain if the number of Directors is at its minimum of 2 as is provided in Article 84.

The appeal is, therefore, dismissed with costs to be borne by the appellants personally. Deposit to respondents on account of taxed costs.

Suffian L.P. and **Mohamed Azmi J.** concurred.

Appeal dismissed.

Solicitors: *Mah-Kok & Taye; Sault & Co.*